

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI

MILIMANI LAW COURTS

Election Petition 451 of 2011

JOYCE WANJIRU KABUI.....PLAINTIFF

-VERSUS-

JACOB O. ORIANDO OCHANDA.....DEFENDANT

RULING

The applicant in the Notice of Motion dated 24th August 2011 seeks a temporary injunction to restrain the Respondent, his agents/servants or any other person acting on his behalf from trespassing or erecting any structures on Land Parcel No.209/109767 Nairobi pending the hearing and determination of this suit.

The applicant states that he is the registered owner of the said parcel of land as is evidenced by a copy of a certificate of title exhibited annexure “JWK 2” of the supporting affidavit sworn by the applicant on 26th August 2011. The Respondent is said to have trespassed on the suit land while the applicant had travelled to the United States of America, an act which if not contained would cause the applicant irreparable loss.

To oppose the application, the Respondents filed a replying affidavit sworn on 7th September 2011 in which he depones that he bought the suit land from one Adan Mohamed Huseman in 2005 who in turn had acquired the same from a Corporative Society called Moto Moto Multipurpose Co-operative Society as would be seen from the copy of the society’s certificate of ownership dated 15th February 2002, annexed to the replying affidavit as annexure “J002”. Annexed as “J001” is a copy of an agreement for sale dated 30th August 2005 by virtue of which the respondent claims to have purchased the suit property, described therein only as “Plot No. 70”.

The respondent claims that the applicant has not demonstrated how she came to acquire the file to the Land on which stand certain houses, erected thereon by the said Adan Mohamed Hoseman and which the respondent has been renting out without any objection by the applicant.

Parties filed written submissions in the application. The applicant’s position is that her legal title is proved by documentary evidence provided by in the form of a grant issued by the Government which in her view is superior to the alleged sale agreement and certificate of ownership relied upon by the Respondent.

The Respondent on the other side has submitted that the applicant’s title is suspect and perhaps fraudulently acquired. Also that the respondent being in possession should not be enjoined in the absence of the applicant’s failure to raise any objection to such possession since he took over the property in August 2005. Relying on the authorities of RAMJI DEVJI VEKARIA & ANOTHER .VS. MUNICIPAL COUNCIL OF ELDORET (2006) Ekir and HASHAM LALJI PROPERTIES LTD –VS- KIPCHOGE KEINO (2006) Ekir the Respondent submits that the orders sought would, if granted determine the matter without considering the merits thereof and/or before evidence is taken to prove fraud.

I am of the considered view that, the applicant having not sought any mandatory order of eviction, the same cannot be considered at this stage and the authorities cited by the respondent do not apply. Whilst I accept the applicants submission that she holds a superior interest over the suit property herein the

respondent and has therefore established a prima facie case against the respondent. In view of her legal and superior title, she deserves an order for the preservation of status quo pending the hearing and determination of the suit, the court being of the view that she would otherwise suffer irreparable loss.

Accordingly the application is allowed and an injunction order issued to restrain the respondent from further developing the land and/or erecting any further structures thereon pending the hearing and determination of the suit.

Costs as prayed.

Dated signed and delivered at Nairobi this 26th day of January 2012.

M.G. MUGO
JUDGE

In the presence of.....for the applicant
and.....for the respondent.